



UNITED STATES DEPARTMENT OF COMMERCE
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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/010,555 01/28/93 SOLAZZI

M CHEMPLEX-3
EXAMINER

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18M1

CANO, M
ART UNIT PAPER NUMBER

2

1809
DATE MAILED:

03/30/93

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on _____ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), — days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- Notice of References Cited by Examiner, PTO-892.
- Notice re Patent Drawing, PTO-948.
- Notice of Art Cited by Applicant, PTO-1449.
- Notice of Informal Patent Application, Form PTO-152.
- Information on How to Effect Drawing Changes, PTO-1474.
- _____

Part II SUMMARY OF ACTION

1. Claims 1 - 20 are pending in the application.

Of the above, claims 16 - 20 are withdrawn from consideration.

2. Claims _____ have been cancelled.

3. Claims _____ are allowed.

4. Claims 1 - 15 are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. Formal drawings are required in response to this Office action.

9. The ~~corrected or substitute~~ drawings have been received on 1/28/93. Under 37 C.F.R. 1.84 these drawings are acceptable. not acceptable (see explanation or Notice re Patent Drawing, PTO-948).

10. The proposed additional or substitute sheet(s) of drawings, filed on _____ has (have) been approved by the examiner. disapproved by the examiner (see explanation).

11. The proposed drawing correction, filed on _____, has been approved. disapproved (see explanation).

12. Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.

13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. Other

EXAMINER'S ACTION

Part III DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I Claims 1-15, drawn to a device for creating a sample receptor for retaining a sample, classified in Class 422, subclass 102.

Group II Claims 16-20, drawn to a method of forming a receptacle used to subject a sample to spectrochemical analysis, classified in Class 436, subclass 174.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (M.P.E.P. § 806.05(h)). In the instant case the product as claimed can be used in a materially different process of using that product such as culturing pathogenic organisms.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by

their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Arthur L. Plevy on March 9, 1993 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-15. Affirmation of this election must be made by applicant in responding to this Office action. Claims 16-20 are withdrawn from further consideration by the Examiner, 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

5. Claims 1-15 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, lines 7 and 8: The phrases "said sheet of material" and "said peripheral edges" lack of positive antecedent basis.

Claim 6, line 1: The phrase "said flexible sheet" lacks of positive antecedent basis.

Claim 8, lines 6 and 7: The phrases "said circumferential groove" and "said cell body" lack of positive antecedent basis.

Claim 12, line 2: The phrase "said spectrochemical analysis" lacks of positive antecedent basis.

Claim 13, line 2: The phrase "said sample" lacks of positive antecedent basis.

Claim 14, line 3: The phrase "said sample cup" lacks of positive antecedent basis.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Solazzi ('210).

Solazzi, U.S. Pat. No. 4,698,210 illustrates in Figs. 2-5 a tubular body (11, 12) having a tapered exterior wall (42) and at least one open end and closed end (14); an annular collar (23), having a tapered inside wall (51) at an angle which is supplemented to the tapered exterior wall of the tubular body, being disposed around the tubular body with an interference fit, whereby the collar engages a sheet of material disposed across the open end of the tubular body being compressed between the exterior wall of the tubular body and the interior wall of the annular collar, covering the peripheral edges of the sheet of material and pulling the sheet taut over the open end; an interlocking means for locking the annular collar at a set position on the tubular body is provided; the tubular body having a predetermined length engaging with the annular collar; the

interlocking means including a semicircular groove (43) located on the tapered exterior wall of the tubular body and an inwardly directed semicircular protrusion (50) engaging the semicircular groove when the annular collar and the tubular body are assembled; the tubular body including a continuous peripheral flange (26) located the exterior of the tubular wall, extending above the closed end; the closed end including venting means (40) for maintaining pressure equalization; the tubular body further including a second open end (41) permitting introduction of a sample into the tubular body; the annular collar having first and second ends, the first end including an outwardly directed flange (22) to facilitates alignment of a sample cup; the tubular body and the annular collar formed from polyethylene (see col. 4, lines 16-19).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Sultan et al., U.S. Pat. No. 4,982,615 disclose a sterile container for collecting biological samples for purposes of analysis.

Lesage et al., U.S. Pat. No. 4,961,916 disclose a sample device.

Solazzi, U.S. Pat. No. 4,402,909 discloses vials for comminuting and blending samples for spectrochemical analysis. Libman et al., U.S. Pat. No. 4,046,138 disclose a diagnostic device for liquid samples.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton I. Cano whose telephone number is (703) 308-3959.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Milton I. Cano:mic
March 10, 1993

Jill Johnston
JILL A. JOHNSTON
PRIMARY EXAMINER
GROUP 1809